



South Carolina

Department of Insurance

300 Arbor Lake Drive, Suite 1200
Columbia, South Carolina 29223
P.O. Box 100105
Columbia, South Carolina 29202-3105

MARK SANFORD
Governor

MEMORANDUM

TO: All Brokers Transacting Business within the State of South Carolina

FROM: Gwendolyn Fuller McGriff
Deputy Director & General Counsel

Tim Baker
Deputy Director

RE: Producer Compensation Letter of Inquiry of December 30, 2004

DATE: January 11, 2005

The purpose of this Memorandum is: (1) to respond to a number of inquiries that we have received about the Department's letter dated December 30, 2004; and (2) to clear up any confusion that may exist about what brokers have to do to comply with this request. This information is being requested in accordance with existing examination authority of the Department. This memorandum does not apply to medical malpractice insurance contracts of the South Carolina Medical Malpractice Joint Underwriting Association.

Following the petition filed by New York Attorney General Eliot Spitzer in response to inappropriate solicitation activities among some insurance brokers, the National Association of Insurance Commissioner (NAIC) developed a task force (NAIC Task Force on Broker Activities) to conduct a national inquiry into broker activities within the individual states. Activities in South Carolina were specifically listed in Eliot Spitzer's complaint.

In response to the allegations raised by Eliot Spitzer, the NAIC developed a template letter to be used by the states. In November, the members of the Task Force agreed in the interest of uniformity to use the template developed by the NAIC to investigate activities within each state to determine whether any of the activities described in the Spitzer litigation were occurring in the insurance marketplace. A few states could not wait on the development of the template and sent out individual inquiries prior to the template being finalized.

The Department's December 30th letter you may have received is the NAIC template. It is designed basically to determine whether any of the inappropriate solicitation activities cited in the litigation filed by New York Attorney General Eliot Spitzer exist in South Carolina.

The phrase “Inappropriate solicitation activities” is defined in the December 30 template letter as “any activity whereby an insurance producer:

- (a) seeks, requests, or obtains any insurance quote, bid or illustration that is:
 - (i) intentionally higher, changed or revised upward or otherwise intentionally less favorable to the client/consumer or prospective client/consumer, than those provided by other insurance companies; (ii) designed or intended not to be selected by a client/consumer or prospective client/consumer; (iii) designed or intended to present to the client/consumer or prospective client/consumer a false appearance of competition by insurance companies;
- (b) withholds or limits the receipt or presentation of insurance quotes, bids or illustrations sought on behalf of a client/consumer in a manner which is contrary to the interests of the client/consumer; or
- (c) engages in activity that otherwise may be known as or understood to be “bid-rigging” or inappropriate steering of business which is contrary to the interests of the client/consumer.”

This memorandum rescinds the December 30 template letter and replaces it with the following procedure. Brokers who have NOT engaged in any of the afore-mentioned activities may satisfy the requirements of this memorandum and the December 30 template letter by mailing or delivering the attached affidavit with a wet ink signature to the Department of Insurance at:

Attention: David Belton, Esquire
South Carolina Department of Insurance
300 Arbor Lake Drive, Suite 1200
Columbia, South Carolina 29223

If hand delivered, the affidavit must be received in the Department by 5:00 p.m. on February 15, 2005. If mailed, the letter must be post-marked no later than February 15, 2005. Attached for your information and convenience is a sample affidavit. The Department *will* follow-up with those brokers who do not submit an affidavit by February 15, 2005. Additionally, the Department will schedule a conference call to address any additional questions that may exist about this matter on January 26, 2005. The dial-in number for the conference call will be posted on the Department’s website: www.doi.state.sc.us.

Please do not hesitate to contact David Belton, Esquire at (803) 737-6158 if you have any questions or concerns about the content of the affidavit. We will be more than happy to address any additional questions or concerns that may exist about this matter or to assist you in any way possible.

State of South Carolina)
) Affidavit
County of _____)

COMES NOW, the affiant duly sworn, who deposes and says as follows:

1. My name is _____, and I reside at _____
(Full name)
2. My Broker Identification Number (SSN) is _____.
3. I have NOT had any relationship with Marsh Global Broking, Inc., Marsh Inc., or any other brokerage firm where I received contingent commissions. (This does not apply to Med/Mal business placed with the JUA/PCF).
4. I have reviewed the definition of inappropriate solicitation activities whereby an insurance producer (broker):
 - (a) seeks, requests, or obtains any insurance quote, bid or illustration that is:
 - (i) intentionally higher, changed or revised upward or otherwise intentionally less favorable to the client/consumer or prospective client/consumer, than those provided by other insurance companies; (ii) designed or intended not to be selected by a client/consumer or prospective client/consumer; (iii) designed or intended to present to the client/consumer or prospective client/consumer a false appearance of competition by insurance companies;
 - (b) withholds or limits the receipt or presentation of insurance quotes, bids or illustrations sought on behalf of a client/consumer in a manner which is contrary to the interests of the client/consumer; or
 - (c) engages in activity that otherwise may be known as or understood to be “bid-rigging” or inappropriate steering of business which is contrary to the interests of the client/consumer.

I hereby swear and affirm that I have not engaged in any such activities in connection with a South Carolina risk. I certify that the information in this affidavit is true, correct and complete in all respects.

Dated this day of , 2005.

Sworn to before me

this day of January, 2005.

My commission expires: